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STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

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Testimony of
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on
"Boutique Fuel Reduction Act of 2006" Discussion Draft
before the
House Committee on Energy and Commerce

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Good morning, Mr. Chairman and members of the Committee. I am Bill Becker, Executive Director of STAPPA – the State and Territorial Air Pollution Program Administrators – and ALAPCO – the Association of Local Air Pollution Control Officials – the two national associations of clean air agencies in 54 states and territories and over 165 major metropolitan areas across the United States. Our associations' members are responsible for achieving and sustaining clean, healthful air throughout the country and hold primary responsibility under the Clean Air Act for implementing our nation's air pollution control laws and regulations.

STAPPA and ALAPCO were pleased to be invited to testify before this Committee a month ago as you evaluated gasoline supply, price and specification issues, and we appreciate being invited back today to offer our perspectives on the legislation

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you have drafted. Given the testimony our associations provided at last month's hearing, it should come as no surprise that STAPPA and ALAPCO oppose the draft bill, the "Boutique Fuel Reduction Act of 2006." As we have consistently expressed, our associations continue to believe firmly that any legislation to further restrict the ability of states and localities to adopt clean air fuel programs (often referred to as "boutique fuels") is not only unwarranted, but could unnecessarily jeopardize public health and clean air.

It is important to put the issue of state clean air fuels in the appropriate context.

A state clean air fuel is one developed and included by a state or locality in a State Implementation Plan (SIP) approved by the U.S. Environmental Protection Agency (EPA) to reduce motor vehicle emissions and improve air quality. Authority for these programs is provided under Section 211(c)(4) of the Clean Air Act. As EPA announced last week, there are just seven distinct types of these fuels in 12 states. These include three low-volatility fuels, one low-volatility fuel with sulfur provisions, one low-emission diesel fuel, one cleaner burning gasoline and one wintertime gasoline. State clean air fuels do not include any federal fuel program, such as low-sulfur gasoline, ultra-low sulfur diesel or reformulated gasoline (RFG); they do not include any state-mandated programs for ethanol-blended or oxygenated fuels; and they do not include California's clean-burning gasoline.

States pursue clean air fuels for various reasons.

Some states are not eligible to opt into the federal RFG program and, therefore, adopt a clean air fuel in order to obtain cleaner-than-conventional gasoline in a particular area. Others, who are eligible to opt into federal RFG, have elected to pursue a low-volatility fuel (i.e., one with a low Reid Vapor Pressure, or RVP) instead, as a less expensive alternative to RFG. It is especially significant that in a number of instances, a state or locality seeking to reduce smog-forming emissions pursued a clean air fuel over opting into the federal RFG program at the urging of the refining industry. Although federal RFG would have reduced not only ozone precursors, but toxic air pollutants as well, the industry argued instead for a low-volatility fuel with more limited air quality benefits and a lower price tag. In the President's 2001 National Energy Policy Report, EPA concluded that fuel suppliers were "willing partners" in advancing state clean air fuel programs over the uniform federal RFG program.

It is also important to understand the very limited scope of states' authority with respect to fuels. The Clean Air Act gives primary authority for regulating the environmental impacts of fuels to EPA, preempting states and localities from controlling or prohibiting any characteristic component of a motor vehicle fuel or fuel additive. However, recognizing that there may be extenuating circumstances warranting a state or local fuel program, Congress provided, in Section 211(c)(4) of the Clean Air Act, two specific exceptions to the otherwise general preemption – specifically, if the EPA Administrator finds that a special state or local fuel standard is necessary to attain the National Ambient Air Quality Standards (NAAQS) because 1) no other measures exist to bring about timely attainment or 2) other measures exist, but are unreasonable or impracticable. In other words, a state can only adopt a clean air fuel if no other more

reasonable or more practicable measure exists, and only if EPA approves. Congress also placed additional restrictions on these fuels when it enacted the Energy Policy Act of 2005 (EPAct) last summer. In particular, EPAct prohibits the number of state clean air fuels from increasing beyond the seven on EPA's proposed list and restricts states from adopting any fuels not already adopted in the same Petroleum Administration Defense District (PADD).

So why are clean air fuels so important to states and localities?

Cleaner fuels have been, and will continue to be, critical to reducing air pollution and protecting public health. EPA has concluded these fuels "deliver substantial air quality and public health benefits at minimal costs," and has indicated that "fuel controls can often be implemented quickly and, once implemented, produce benefits immediately, typically reducing emissions from each vehicle in the fleet with no need for vehicle fleet turnover. This fleet-wide impact distinguishes fuels control from most other mobile source emission control options available to state and local areas." In addition, the Government Accountability Office, in a June 2005 study, reported that state clean air fuel programs have reduced smog-forming emissions by up to 25 percent over conventional gasoline.

This is especially important because at least 160 million people – more than half our population – still live in areas with unhealthful levels of 8-hour ozone, fine particulate matter or both. Ozone contributes to lung disease, irritation of the respiratory

system and cardiovascular symptoms, while fine particulate matter can lead to damage to lung tissue, impaired breathing, cardiovascular disease and even premature mortality.

To address these health problems, states are required by the Clean Air Act to develop, beginning next year, approvable SIPs for attaining and maintaining the NAAQS for 8-hour ozone and fine particulate matter. And cleaner fuels will continue to be an important regulatory option for states and localities to consider. If authorities to adopt these fuels are further curtailed, states may not be able to submit approvable SIPs to EPA, which could lead to sanctions under the Clean Air Act, including the withholding of hundreds of millions of dollars of federal highway funds and what is, in effect, a moratorium on new construction.

Before providing our specific comments on the draft bill, we wish to raise a fundamental concern with the legislation; namely, that it is unclear what problem this legislation seeks to resolve.

First, any claims that state clean air fuels contribute to high gasoline prices are totally unsubstantiated. According to EPA, the costs of these fuels are minimal, ranging from 0.3 to 3 cents per gallon. The average national price for a typical gallon of regular gasoline today is almost $2.90; state clean air fuels are responsible for only a fraction of 1 percent of this cost. Yet, the price differential between two gas stations supplied by the same fuel company, located just blocks away from each other, can be many times higher than the cost attributed to a clean air fuel. So what does account for a typical gallon of gasoline? According to the U.S. Department of Energy‘s (DOE’s) Energy Information

Administration, over half (55 percent) is for domestic and foreign crude oil. About 22 percent is for refining (processing the crude to make gasoline, diesel fuel and other products for sale to refiners). Almost 20 percent goes for taxes or fees that are paid to federal, state or local governments, while 4 percent is for distribution and marketing, including shipping by pipeline, storage at terminals and delivery by trucks to retail stations.

Second, to the extent there is concern over the potential for state clean air fuels to exacerbate a future supply disruption caused by a natural disaster or unexpected circumstance, such as a pipeline break or refinery shutdown, Congress addressed this issue last summer when it adopted EPAct. The law includes a provision that authorizes the EPA Administrator to temporarily waive fuel requirements during supply emergencies. EPA was able to use this authority swiftly and effectively following the devastation of Hurricanes Katrina and Rita.

Finally, it seems premature for this Committee to be considering further restrictions on state clean air fuels before several ongoing studies on this issue are completed. EPAct requires EPA and DOE to undertake two studies and report their results to Congress, along with recommendations. The first, due in August of this year, is to focus on the effects of state-adopted fuel programs on air quality, the number of fuel blends and the availability, cost and fungibility of fuel; the second, due in June 2008, is to focus on fuel system harmonization. And last month, President Bush directed EPA Administrator Stephen Johnson to convene a Governors Fuels Task Force to review clean

air fuels across the country and make recommendations. The Task Force has had several conference calls and expects to issue its report in the next several weeks.

Now that I have explained why STAPPA and ALAPCO oppose any further limitation of states' rights to adopt clean air fuels, I would like to outline some specific concerns with the provisions of the draft bill being contemplated by this Committee, which reduces, even further than EPAct, the number of clean air fuels, and places additional restrictions, beyond those of EPAct and the Clean Air Act, on states' abilities to adopt even the very limited number of fuels to be allowed.

The draft bill reduces the total number of clean air fuels allowed in the nation from seven, under EPAct, to just three – each with a different RVP and none of which may control sulfur or toxics beyond levels already required by EPA. One of the three fuels on the "Approvable State Fuels List" is to have an RVP of 7.0 pounds per square inch (psi), with the remaining two to be determined based on EPA and DOE's consideration of a number of undefined, subjective criteria. Likewise, although the bill provides for the potential addition to the list of just one more fuel – for a total of no more than four fuels nationwide – the hurdles for making such an addition are forbidding and subjective, as are those that apply if a state wishes simply to replace one fuel from the approved list with another from the list.

Keeping in mind that the Clean Air Act requires adoption by a state of a clean air fuel program to be the measure of last resort in meeting the NAAQS, we find it unacceptable that the very short list from which states will be forced to choose will be

comprised of lowest-common-denominator fuels listed because they are most advantageous for fuel supply and distribution, not because they have the greatest potential for helping an area meet public health standards.

Also troubling is the bill's requirement that in no case may more than two of the three approvable state fuels be approved within the same PADD, thus pitting states within the same PADD against one another in determining which two of the three fuels will be allowed. Additionally, restricting fuels according to PADD completely ignores the fact that the design of PADDs has nothing at all to do with states' air quality circumstances and that states within the same PADD can have vastly different needs regarding the achievement of clean air goals. Moreover, the draft bill essentially eliminates what little ability remains under EPAct for state and local agencies to design and implement innovative clean air fuel programs that could play a truly meaningful role in meeting those goals.

Further, this bill is not only untenable, it is unworkable. During the exact period of time when states and localities across the nation face the daunting challenge of developing comprehensive SIPs to achieve and sustain clean air and public health goals – 8-hour ozone SIPs are due by June 2007 and fine particulate matter SIPs are due by April 2008 – the draft bill not only severely constricts states' authorities, it creates tremendous uncertainty. In the first 18 months after the bill is signed into law, a state could adopt any of the seven fuels listed under EPAct as long as it is already approved in another state in the same PADD; however, if a fuel is dropped from the EPAct list during this time, the

draft bill would prohibit replacing it with another fuel, thus reducing the number of options available to states.

After 18 months, once EPA and DOE promulgate the Approvable State Fuels List under the draft bill, the ground rules change. The number of clean air fuels from which states can choose shrinks to three, no more than two of which would be allowed in the same PADD. Not knowing which three fuels would ultimately be listed under the bill, states could conceivably adopt a fuel under EPAct, only to find that it is no longer acceptable once the bill takes effect or that there are more than two fuels in place in the same PADD.

In PADD 2, for example, there are currently three different RVP fuels approved in four states – 7.0 psi in Kansas and Missouri, 7.2 psi in Missouri and Illinois and 7.8 psi in Michigan. Although the draft bill stipulates that 7.0 psi fuel will be one of the three listed as approvable, it is unclear whether 7.2 psi and 7.8 psi will be on the final list and, in any event, no more than two of the three can be adopted in the PADD. Thus, at least one, if not two, states in PADD 2 will be compelled to drop their fuel requirement.

Finally, just a word about Section 2 of the draft bill, which expands the circumstances under which EPA may exercise its authority to issue temporary waivers. We question the need for this expansion. In explicitly providing in EPAct for temporary waivers during supply emergencies, beyond the enforcement discretion authority the agency has always had, Congress gave EPA broad authority to waive fuel requirements, including for events “that could not reasonably have been foreseen or prevented” and

those that are not the result of "the lack of prudent planning on the part of the suppliers." The draft bill would add language to allow for waivers in the case of "unexpected problems with distribution or delivery requirement that is necessary for transportation and delivery of fuel or fuel additives." We find this language unclear and, given the broad authority already provided to EPA, unnecessary.

STAPPA and ALAPCO oppose any further restrictions on states' abilities to adopt clean air fuels programs and urge Congress to instead take steps to expand states' authorities to pursue the cleanest fuels available today. We offer three recommendations in this regard.

First, Congress should consider expanding the list of clean air fuels available under EPAct to include California Clean Burning Gasoline.

Second, Congress should consider expanding the eligibility criteria for opting into the federal RFG program. Today, areas that violate the 8-hour ozone standard (but not the 1-hour standard) are not allowed to opt into the RFG program. And attainment areas have never been eligible to opt into this program. Since the RFG program was the product of an extremely successful regulatory negotiation over a decade ago, and was supported by every one of the major stakeholders – including the American Petroleum Institute, the National Petrochemical and Refiners Association, the Renewable Fuels Association, the states and the environmental and health communities – Congress should consider expanding the eligibility criteria to allow additional areas (e.g., 8-hour ozone nonattainment areas and even attainment areas) to opt into the RFG program. This would

allow for an expansion of the cleaner federal fuels program to more areas of the country, obviating the need for states to adopt their own clean air fuel programs.

Third, Congress should help facilitate the ability of states and localities to adopt cleaner regional fuels. Today, states in the Ozone Transport Region and in the Midwest have been discussing ways in which they can coordinate efforts to adopt cleaner fuels on a regional basis. However, because of statutory limitations, certain jurisdictions (i.e., attainment areas) would not be able to participate in such a regional approach. Allowing attainment areas to participate in regional clean air fuel programs would not only assist in achieving air quality goals, but would also address concerns related to fungibility.

In conclusion, STAPPA and ALAPCO urge the Committee not to pursue this bill or any measure that would place further limits on states' abilities to adopt clean air fuels. We firmly believe these state clean air fuel programs have been wrongly targeted and that further curtailing them will serve only to impede state and local efforts to achieve and sustain clean, healthful air. Claims that these fuels contribute to high gasoline prices or irresolvable supply or distribution problems remain unsubstantiated. Further, EPACT gives EPA specific authority to respond swiftly and effectively should fuel supply or distribution ever become an issue. If Congress is interested in taking legislative action, it should expand state authorities by allowing increased flexibility to adopt clean air fuel programs that will meet public health needs in the future.